

GAO

Report to the Chairman, Committee on
International Relations, House of
Representatives

September 1999

FOREIGN MILITARY SALES

Review Process for Controlled Missile Technology Needs Improvement



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Abbreviations

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| DOD | Department of Defense |
| FMS | Foreign Military Sales |
| MTCR | Missile Technology Control Regime |



United States General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

B-281640

September 29, 1999

The Honorable Benjamin A. Gilman
Chairman, Committee on International Relations
House of Representatives

Dear Mr. Chairman:

The U.S. government and the defense industry face growing challenges as they attempt to maximize the benefits of international weapon sales while operating within the statutory requirements that control defense exports to protect national security and advance foreign policy. Over the years, the U.S. government has sold certain sensitive military items through the Foreign Military Sales program partly because the items are presumed by some to be better controlled by the program than through direct commercial sales.¹ However, the process for making decisions about what technology may be transferred under the program is not readily understood. As part of a broad request to review the Foreign Military Sales program, you asked us to look at how the program safeguards technology and arms transfers. Specifically, we (1) identified the process for deciding what technology may be transferred as part of a sale through the program, (2) assessed the controls for ensuring that technology transfer considerations have been weighed when reviewing requests and agreements, and (3) examined the Department of Defense's proposals to improve technology transfer procedures.

Results in Brief

The U.S. government relies on a complex process with many participants to determine what technology may be transferred as part of a sale through the Foreign Military Sales program. Technology transfer decisions begin with an interagency National Disclosure Policy Committee process. When making overall policy decisions, the committee provides authority for the government to transmit classified information associated with military items but does not approve the actual transfer of those items. It does not typically address whether systems must be sold through the Foreign

¹ Other potential advantages of the Foreign Military Sales program include promoting interoperability with allies and encouraging military to military contacts.

Military Sales program or a direct commercial sale. The committee has a process for reviewing exceptions to the National Disclosure Policy. Within the National Disclosure Policy framework, separate organizations within the military departments recommend whether the requested items under their jurisdiction may be sold and manage the sales.

The U.S. government has not established a process for ensuring that certain controlled items are fully and systematically identified when reviewing requests or approving agreements under the Foreign Military Sales program. As a result of weaknesses in the review process, items controlled by an international missile nonproliferation agreement have been transferred under the program without proper review and approval.

As currently structured, the Department of Defense's proposals to reform the Foreign Military Sales program are primarily focused on reducing time for making technology transfer decisions. In considering the Department's efforts to shorten the processing time, officials acknowledge the need to properly assess the national security risks and benefits of proposed transfers. A Department of Defense and industry working group proposes more rigorously implementing current requirements to make technology transfer assessments early in the planning of a weapon program. Such assessments are a means of expediting technology transfer decisions when responding to foreign customers' requests.

We have included recommendations in this report aimed at providing proper review and approval of transfers of controlled technologies through the Foreign Military Sales program.

Background

The United States generally exports military items and services either through (1) U.S. government sales under the Foreign Military Sales (FMS) program or (2) direct commercial arms sales by individuals and business entities. The Arms Export Control Act authorizes the President to control the export of all defense articles and services and to designate items that are to be controlled under the U.S. Munitions List.² The President delegated

² Section 38 (a) of the Arms Export Control Act (22 U.S.C. 2778 (a)).

the control of exports of Munitions List items to the Secretary of State³ and the implementation of the FMS program to the Secretary of Defense. As part of its responsibilities, the State Department regulates direct commercial arms sales through export licenses and reviews and approves arms sales under the FMS program.⁴ Within the Department of Defense (DOD), the Defense Security Cooperation Agency is responsible for overall administration of the FMS program, while the military departments implement individual sales under the program. The Arms Export Control Act generally excludes sales under the FMS program from the requirement for munitions export licenses.⁵

Specific policies and controls have been established for the transfer of classified military intelligence and critical military technology and defense articles. A presidential executive order prescribed a uniform system for classifying, safeguarding, and declassifying national security information. The National Disclosure Policy was established to provide a framework for the approval or denial of the transfer of classified military information to foreign governments and international organizations.⁶ A decision to disclose or transmit information must satisfy several criteria. These include that the transmission of information be consistent with U.S. foreign policy and U.S. military and security objectives and result in benefits to the United States. In addition, the foreign recipient must afford the information substantially the same degree of protection as the United States provides it, and the information must be limited to what is necessary to fulfill the prescribed purpose. Although the policy prohibits the transmission of certain classified information, technology, and defense articles to foreign countries, it provides a process by which exceptions may be granted. Procedures established under the National Disclosure Policy are also used to consider the release of unclassified military information to foreign entities.

³ The Secretary of State must have concurrence of the Secretary of Defense for items or categories of items that shall be considered as defense articles or services subject to export control.

⁴ The Department of Commerce, through the Commerce Control List, regulates and reviews export licenses for "dual-use" items, which have both military and civilian applications.

⁵ 22 U.S.C. 2778(b)(2).

⁶ Classified military information includes military materiel, arms, and munitions, as well as military research and development information, military production information, and military operations planning and readiness information.

The United States and other nations have agreed to limit the spread of certain types of arms and technologies by establishing various international agreements, or regimes. For example, in 1987 the United States and several major trading partners created the Missile Technology Control Regime (MTCR) to control the proliferation of missiles and related technology. This regime, implemented through national legislation in each of the member countries, consists of common export policy guidelines that include a list of controlled items. There are two categories of controlled items. Category I items are rarely approved for export. They include complete missile systems and subsystems such as rocket engines and guidance sets. Category II items comprise a wide range of commodities, including test equipment and propellants. These items are evaluated on a case-by-case basis and typically denied for sale if destined for use in weapons of mass destruction. The U.S. government controls the two categories of items through the U.S. Munitions List or through the Commerce Control List. The Missile Technology Export Control committee is a U.S. interagency working group that reviews proposed U.S. exports of missile technology and evaluates them in terms of MTCR and U.S. nonproliferation policy.

FMS Program Relies on the Disclosure Process to Determine What Technology May Be Transferred

The U.S. government has a complex process with many participants to determine what technology may be transferred as part of a proposed sale. An interagency committee oversees the National Disclosure Policy and considers exceptions to the policy when classified military information is involved in the proposed transfer. The committee does not approve actual foreign military sales but provides authority to transmit the classified information associated with sales. In addition, military departments with responsibility over certain weapon systems and technologies have administrative processes to make disclosure decisions within their jurisdictions. Each military department has its own process for making disclosure decisions within its authority and for preparing proposed FMS agreements.

National Disclosure Process Involves Multiple Agencies

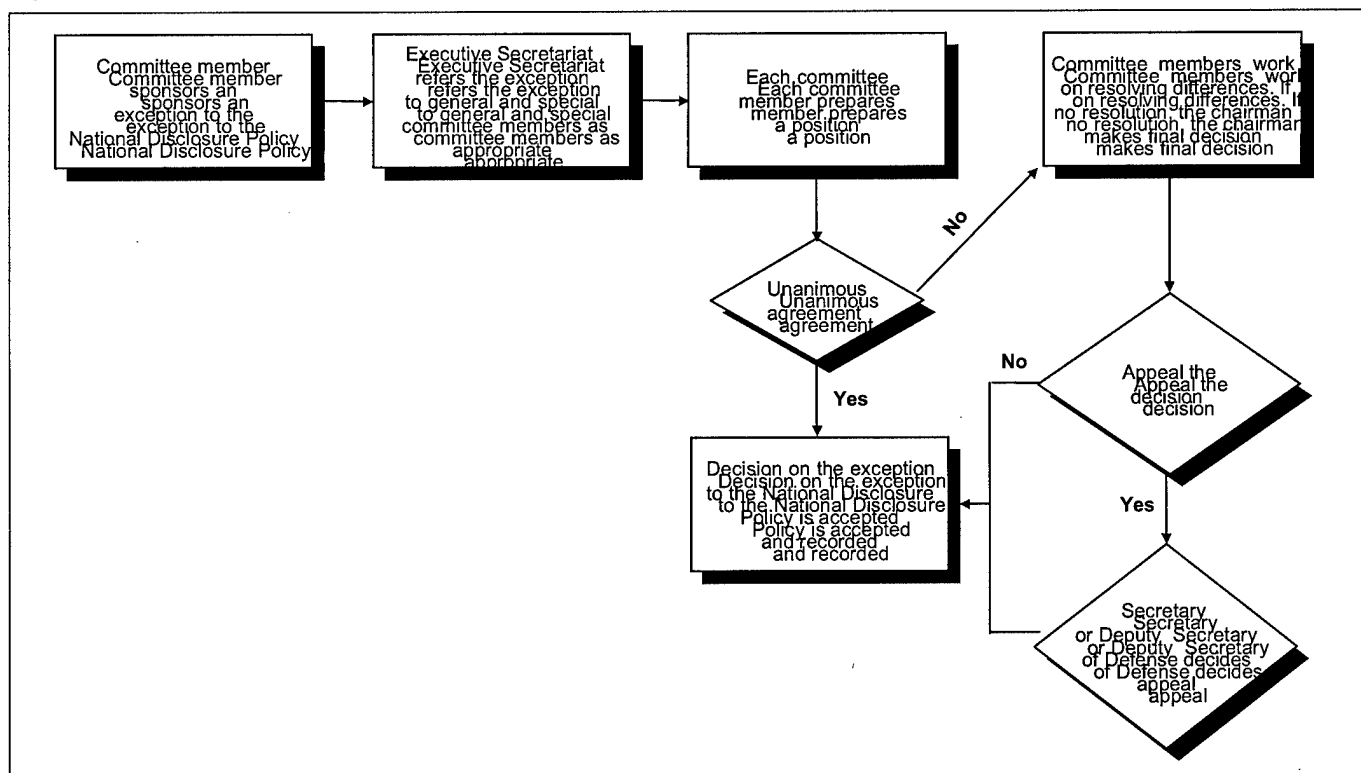
The National Disclosure Policy Committee is responsible for formulating, issuing, administering, and monitoring the implementation of the National Disclosure Policy, as well as considering exceptions to the policy. Although the committee is responsible for determining what classified military information may be transmitted to a foreign government, it does not approve the actual sale that transfers the information. The committee may discuss actual sales in the context of considering exceptions to the policy.

The committee consists of general members and special members who represent heads of various federal agencies, DOD components, and each military department. General members vote on all issues and include the Secretaries of State, Defense, Army, Navy, and Air Force and the Chairman of the Joint Chiefs of Staff. Special members usually vote only on those issues in which they have a direct interest.⁷ The committee is co-chaired by the State Department and DOD.

The committee has a process for reviewing exceptions to the National Disclosure Policy. As illustrated in figure 1, the committee's executive secretary distributes any request for an exception to policy to all relevant members. The committee's procedures allow a 30-day time frame for reaching final decisions. The members present a position within 10 working days. If there is not unanimous agreement on the proposed exception, the committee members work on achieving consensus. If they are unable to do so, the committee chairman formulates a position and informs the members within 10 working days. The chairman's decision becomes final unless appealed to the Secretary or the Deputy Secretary of Defense by the cognizant department or agency within 10 working days.

⁷ Special members include the Secretary of Energy; the Directors of the Central Intelligence Agency and the Defense Intelligence Agency; the Under Secretaries of Defense for Policy, for Acquisition and Technology, and for Command, Control, Communications, and Intelligence; the Assistant to the Secretary of Defense (Atomic Energy); and the Director of the Ballistic Missile Defense Organization.

Figure 1: National Disclosure Policy Exception Process



Unlike in earlier times, when the FMS program was often favored over commercial sales as the method of transfer for some sensitive weapon systems, some committee representatives told us that today they typically do not recommend that systems be sold through the FMS program and often do not address the method of sale. According to several officials, both methods of sale are equally secure in protecting technology. For example, in early 1999 the committee agreed to change a long-standing policy that required an advanced missile system to be sold through the FMS program. The revised policy allows the system to be sold either through the FMS program or directly by the contractor with State Department approval. Irrespective of the method of sale, the purchasing country must agree to security requirements, such as inventory of the equipment, and U.S. government verification that the requirements have been met.

DOD's policy is to remain generally neutral regarding the method of sale. However, the policy allows for exceptions to permit FMS-only

recommendations based on criteria such as presidential directives, legislation, and national or military department policies. While military departments have recommended that certain weapon systems be sold only through the FMS program, military officials we met with had widely varying opinions about whether the FMS program affords greater control than direct commercial sales. Some officials prefer selling sensitive items through the FMS program because DOD officials are involved in implementing every aspect of the sale under that program. Other officials stated that defense contractors have strong incentives to adhere to export control laws and will ensure that sensitive items are properly controlled when sold directly by the contractor.

Military Departments Have Separate Disclosure and FMS Agreement Processes

Each military department has its own process for implementing the National Disclosure Policy and for preparing FMS agreements. The Secretary of Defense has delegated authority to implement the National Disclosure Policy to military departments and other defense agencies for information originated by or under the control of their organizations, provided such information is in compliance with disclosure policy. The military departments, in turn, have delegated some disclosure authority to the heads of commands, agencies, and major staff elements within their organizations. Major military commands we visited have delegated certain authority to disclosure officers who work with weapon program offices on international sales. Appendix I provides additional information on the differences between military departments' disclosure and FMS agreement preparation processes. For example, the Army generally handles FMS agreement preparations at the command level with higher level approval, while the Air Force prepares FMS agreements at the Secretary level with input from other headquarters and program offices. The Army maintains disclosure as a security policy function held by the Deputy Chief of Staff for Intelligence, while the Air Force and the Navy consider disclosure an international function located with the Deputy Under Secretary of the Air Force for International Affairs and the Navy International Programs Office, respectively.

DOD organizations prepare Delegation of Disclosure Authority Letters or component regulations to provide authority to disclosure officers to transmit classified military information to foreign nationals as part of

weapon sales or other military activities.⁸ The disclosure letter explains classification levels, categories, scope, and limitations on information, including unclassified technical data, that may be disclosed to a foreign recipient. Some FMS program officials, in consultation with disclosure officers, refer to the disclosure letter as guidance when preparing FMS agreements. Each military department has a mechanism for verifying that the agreements do not exceed disclosure authority before referring them to the Defense Security Cooperation Agency and State Department for final approval.

Disclosure letters can be subject to interpretation. In matters that require interpretation, disclosure officers contact program managers or engineers for technical assistance. At military commands we visited, the disclosure officers were in separate organizations from the FMS program management offices. For weapon systems programs that had large international sales, the disclosure officers were co-located in the program offices to facilitate decisions. Some disclosure officers told us that they want to retain a separate chain of command from the program offices so they will remain independent from those who manage the sales.

Certain Controlled Technology Is Not Properly Identified and Reviewed Under the FMS Program

The U.S. government has not established a process for ensuring that certain controlled items are fully and systematically identified when reviewing country requests for information or approving agreements to purchase items through the FMS program. While the State Department and many DOD components review proposed FMS agreements, no one organization is responsible for ensuring that all controlled items have been identified and reviewed. As a result, controlled missile-related technology has been transferred under the FMS program without proper review and approval.

DOD Focal Point for FMS Not Responsible for Making Technology Transfer Decisions

While the Defense Security Cooperation Agency is the principal organization through which DOD carries out its security assistance responsibilities, including administering the FMS program, it does not have the mission or expertise to identify controlled technology and make technology transfer decisions for DOD. The Defense Security Cooperation

⁸ DOD directives require DOD components to prepare Delegation of Disclosure Authority Letters and other documents such as the Program Protection Plan and Technology Assessment/Control Plan to ensure that release of technology is considered early on for weapon systems.

Agency is responsible for raising issues, through appropriate channels, when higher decision-making authority is required. It relies on the military departments, as well as other DOD organizations, to identify technology transfer concerns. A DOD directive requires certain DOD components to conduct policy reviews, technical evaluations, operational and military impact assessments, and intelligence assessments of all proposed technology transfer cases. However, Defense Security Cooperation Agency officials said they do not assess whether the military departments have complied with this directive for controlled technology.

As required by policy, the Defense Security Cooperation Agency refers FMS requests and agreements for major defense equipment to the Director, Office of the Joint Chiefs of Staff, and the Office of the Under Secretary of Defense for Acquisition and Technology.⁹ Joint Staff, in coordination with the unified commands and the military departments, provides operational and military mission impact assessments on technology transfers. DOD's Acquisition and Technology office is responsible for ensuring that the proposed technology to be transferred does not threaten U.S. weapon superiority. Security assistance policy requires coordination with these organizations for all new security assistance requests and FMS agreements for major defense equipment, including requests and agreements that are expected to result in a notification to Congress or determined to be of a sensitive nature. Defense Security Cooperation Agency country managers determine whether or not to refer FMS requests and agreements that meet major defense equipment criteria to the Joint Staff and the Acquisition and Technology office. Items that do not meet the criteria are only occasionally referred to these organizations.

The Defense Security Cooperation Agency is also responsible for notifying the State Department of all requests for purchases through the FMS program and for obtaining the Department's approval for FMS agreements. The State Department must provide its approval before any arms can be transferred, including arms sold under the FMS program, but it relies on DOD to provide information describing the proposed sale and the sensitivity of the technology.

⁹ Major defense equipment is defined as sensitive defense articles and services identified on the U.S. Munitions List where the U.S. government has incurred either a nonrecurring research and development cost for the item of more than \$50 million or the item has a total production cost of \$200 million.

The Defense Security Cooperation Agency refers FMS requests and agreements to the Defense Threat Reduction Agency on an ad hoc basis. The Director of the Defense Threat Reduction Agency stated that the Agency does not generally review FMS requests or agreements. However, Defense Threat Reduction Agency officials told us they should be given the opportunity to respond officially on all FMS major defense equipment or sensitive items. Currently, the Defense Security Cooperation Agency does not formally refer FMS requests or agreements to the Defense Threat Reduction Agency and furnishes information copies on a limited number of cases.¹⁰ Because one of the Defense Threat Reduction Agency's principal functions is to provide DOD's recommendations on license applications, it utilizes technical experts and intelligence sources to determine the advisability of exporting a particular controlled item. The Defense Threat Reduction Agency, in reviewing licenses, will examine the legitimacy of foreign companies involved in the sale by using intelligence sources as well as the State Department's Watch List of export violators. Defense Security Cooperation Agency officials stated that they informally discuss intelligence assessments about FMS cases with Defense Threat Reduction Agency officials. Defense Security Cooperation Agency officials told us that they have an opportunity to review the Defense Threat Reduction Agency's intelligence assessments because most FMS cases have associated commercial sales components that require an export license.¹¹ The export license review process identifies foreign companies that may be involved in the sale.

The Defense Security Cooperation Agency also does not routinely refer FMS requests or agreements to intelligence organizations such as the Defense Intelligence Agency for review. According to DOD directives, the Defense Intelligence Agency upon request provides intelligence reviews on technology, goods, services, and munitions transfer cases to the Defense

¹⁰ According to DOD policy, each time the Defense Security Cooperation Agency coordinates FMS requests and agreements with the Joint Chief of Staff and the Office of the Under Secretary, Acquisition and Technology, it also provides information copies to various DOD components, including the Defense Threat Reduction Agency.

¹¹ According to Defense Security Cooperation Agency officials, direct commercial sales are often associated with FMS agreements because of foreign buyer offset requirements and customer preference. Offsets are the entire range of industrial and commercial compensation practices provided to foreign governments and firms as inducements or conditions for the purchase of military goods and services. Offsets can include coproduction, technology transfer, training, investment, marketing assistance, and commodity trading.

Threat Reduction Agency for munitions licenses and to the National Disclosure Policy Committee for exceptions.

Gaps in the FMS Review Process Led to Exports of Missile Technology Without Approval

The lack of clearly established responsibilities for FMS technology transfer review has led to certain controlled items being transferred without proper review and approval. For example, MTCR-controlled equipment has been transferred under the FMS program without proper review and approval for MTCR concerns. The State Department and DOD have no assurance that MTCR-controlled items are routinely being reviewed for nonproliferation concerns. As a result, both departments have begun discussions to improve the review of MTCR items. The State Department and DOD have organizations with expertise in reviewing MTCR-controlled technology for export licenses but are not fully using them to review proposed FMS agreements.

The State Department must provide its approval before any arms, including those sold under FMS agreements, can be transferred. The Defense Security Cooperation Agency submits proposed FMS agreements or summaries to the State Department's Bureau of Political-Military Affairs, Office of Regional Security and Arms Transfer Policy (Regional Security Office), for approval. When an FMS agreement involves missiles or components that may fall under the MTCR, the Regional Security Office refers the agreement to the State Department's Office of Chemical, Biological, and Missile Nonproliferation for review. However, because the Regional Security Office does not have technical experts and may not know which items are MTCR-controlled, officials told us that they rely on DOD to identify whether or not MTCR-controlled items are included in an agreement.

State Department Regional Security Office officials identified a deficiency in the FMS review process for MTCR-controlled items in May 1999, when reviewing a follow-on FMS agreement to a co-production agreement to produce the M1A1 tank with a foreign government. The U.S. government sold equipment under a series of FMS agreements beginning in 1989, including a filament winding machine controlled by the MTCR, to this foreign government to build a tank factory.¹² Regional Security Office officials reviewed this follow-on agreement and forwarded it to the MTCR

¹² A filament winding machine is used to produce lightweight, high-strength structures for a variety of weapon systems parts and commercial products such as liquid natural gas tanks.

experts within the State Department for review. The MTCR experts initially denied approval of the FMS agreement because they thought it was for the sale of the filament winding machine. Because this machine is controlled under category II of the MTCR, they were concerned that this export could contribute to the foreign government's missile production capabilities. However, when State Department officials learned that the agreement was for the sale of spares for a filament winding machine that had already been exported, they approved the sale of the spares. State Department officials told us that the original FMS agreements were not referred to the missile experts for review because the filament winding machine was not specifically listed in the information provided by the Defense Security Cooperation Agency and was identified as test and support equipment. Information was not provided that would have allowed a missile technology expert to know that the agreement involved MTCR-controlled technology.

State Department officials told us that several years ago there was another incident involving a sale to the same country under the same series of FMS agreements. The U.S. government sold an MTCR-controlled item, an accelerator, without proper review by MTCR experts.¹³ According to State Department officials, a subsequent export license application to sell an accelerator to the same country was denied by the State Department because the item was MTCR-controlled. The contractor questioned the denial because the U.S. government had already sold an accelerator to the same country. The State Department advised DOD officials about the problem but does not know what corrective measures DOD took at that time to ensure that MTCR-controlled items under FMS agreements were being properly reviewed. DOD officials responsible for the M1A1 tank FMS agreements said they were not contacted or made aware of the problem.

Sufficient information about weapon system components and equipment in FMS agreements is necessary to identify MTCR-controlled items. Many MTCR-controlled items may not be obvious—even to a technical expert—unless the items in an agreement are reviewed against the list of MTCR-controlled equipment. Some MTCR-controlled items are dual-use and controlled by the Commerce Control List, resulting in confusion over who

¹³ An accelerator, controlled by category II of the MTCR, is an X-ray machine that can be used to inspect missiles and other weapon system components for cracks and voids or welded assemblies used in automotive, shipbuilding, aerospace, and power production component manufacturing.

is responsible for identifying and controlling these items.¹⁴ Regional Security Office officials assumed that DOD had identified all of the technology issues in FMS agreements—including whether or not the agreements covered MTCR-controlled technology. Although State Department officials have discovered two such cases, they do not know how many MTCR-controlled items may have been transferred under the FMS program without proper review because there are no procedures in place to identify such items. In addition to missile-related technology proliferation concerns, State Department officials are concerned about the transfer of sensitive technologies, such as medical testing equipment that can be used to develop biological weapons, that are controlled by other nonproliferation regimes.¹⁵

Technical experts in the military departments, however, told us that they do not review FMS agreements specifically for compliance with the MTCR. Officials at various military departments, commands, and program offices told us that they do not compare items to be transferred under FMS agreements against the list of MTCR-controlled items. They stated that MTCR compliance is the responsibility of either the State Department or the Defense Security Cooperation Agency. According to State Department and Defense Security Cooperation Agency officials, the military departments also have technical experts who know what a particular item's capabilities are and exactly what equipment is being transferred under an FMS agreement.

Defense Security Cooperation Agency officials said their agency does not have the technical experts to identify sensitive technologies such as those controlled by the MTCR. Since the Defense Security Cooperation Agency learned of this coordination deficiency for missile-related technology, it has taken steps to have military departments identify missile-related items in proposed FMS agreements. The Defense Security Cooperation Agency sent draft guidance to the military departments, in August 1999, advising them of their responsibility to identify missile-related technology that is included in proposed agreements and to certify that MTCR concerns have been

¹⁴ The Arms Export Control Act does not specifically address the export of dual-use items under the FMS program.

¹⁵ Other nonproliferation control regimes include the Australia Group to discourage the spread of chemical and biological weapons and the Nuclear Suppliers Group to control enrichment materials and reprocessing plant assistance to countries of nuclear proliferation concern.

resolved. The Defense Security Cooperation Agency also plans to amend an internal coordination document to ensure that agreements have been properly reviewed for MTCR issues.

The State Department routinely reviews proposed FMS agreements that meet the dollar threshold for congressional notification.¹⁶ However, State Department officials said that many MTCR-controlled items are valued below this dollar threshold. The State Department uses a list of FMS agreements that the Defense Security Cooperation Agency provides and that gives a general description of the item being sold as the basis for approving the low dollar value agreements. The current process for approving low dollar value agreements does not identify MTCR-controlled items unless the State Department requests additional information to identify such items.

The State Department and DOD currently do not fully utilize their organizations that have expertise in reviewing MTCR-controlled items. For example, the State Department established the Missile Technology Export Control committee, an interagency working group, to review export license applications involving MTCR-controlled items. However, while the State Department committee representative reviews FMS agreements referred by the Regional Security Office, the full committee does not review FMS agreements for nonproliferation concerns. Defense Threat Reduction Agency reviewers have technical expertise in weapon systems, as well as knowledge of the types of items controlled by the MTCR, but they generally do not identify MTCR-controlled items in agreements because the Defense Security Cooperation Agency does not formally refer FMS agreements to the Defense Threat Reduction Agency.

¹⁶Section 36(b) of the Arms Export Control Act (22 U.S.C. 2776(b)) requires the President to notify Congress of FMS agreements to sell any defense articles or services for \$50 million or more, any design and construction services for \$200 million or more, or any major defense equipment for \$14 million or more before such agreements are issued.

DOD's Reinvention Initiatives Focus on Shortening Technology Transfer Approval Time

DOD has several ongoing reinvention initiatives that attempt to address foreign customer and industry complaints about the FMS program, including the perception that the technology transfer review process takes too long. These initiatives contain proposals focused on shortening the technology transfer review time, for example, by more rigorously implementing DOD requirements for program documentation that assesses what technology may be transferred.

The Defense Security Cooperation Agency organized a working group comprised of DOD and industry officials to address complaints about the technology transfer process. One of the group's proposals is to encourage National Disclosure Policy Committee members to make decisions in a timely manner when acting on exception cases. Although aware of DOD's initiatives to make disclosure decisions more quickly, some committee representatives said they need to research a case and assess the merits of a proposed transfer from a national security perspective. Some officials responsible for disclosure and releasability decisions also told us they have been asked to make decisions more quickly.

Some of the initiatives address the need to improve information to support technology transfer decisions. For example, the DOD and industry working group is proposing more rigorous implementation of current requirements to prepare weapon systems program documents that include technology transfer assessments. This proposal is aimed at addressing technology transfer considerations early in the development of the weapon system to facilitate decision-making when export requests are received. In addition, the Navy recommended pursuing an electronic policy distribution and coordination system to facilitate the work of its internal technology transfer review board and speed disclosure processing.¹⁷ The Army is also sponsoring an initiative to develop an integrated classified database of relevant records and documents such as the National Disclosure Policy and weapon-specific program protection plans to support technology transfer decisions. Air Force headquarters officials told us the Air Force recently reviewed its approximately 800 Delegation of Disclosure Authority Letters to ensure disclosure guidance for all Air Force programs was current. They said one benefit of the review was to reduce the need to consult

¹⁷The Navy Reinvention Laboratory issued reports in October 1998 and June 1999 documenting its first two phases of reform work and recommendations for improvement.

headquarters staff when making disclosure decisions related to Air Force programs, since officials in the field have current guidance.

The DOD and industry working group proposes that DOD conduct a technical review of the U.S. Munitions List to identify items and technologies that should be decontrolled because they are low-risk or already widely available. However, the State Department has authority over the U.S. Munitions List and, with DOD concurrence, is responsible for determining what items are to be controlled.

Beside the FMS reinvention initiatives, DOD has chartered three high-level advisory groups to study international industrial base issues in the context of U.S. national security. These studies are ongoing, but the findings are likely to have an impact on technology transfer policy and procedures.

To date, none of DOD's initiatives specifically addresses the gaps in the FMS technology transfer review process. For example, the DOD/industry working group's proposals address the need to establish disclosure and technology transfer guidelines for controlled unclassified information. The group emphasizes removing unnecessary restrictions. However, the proposals do not address the need to establish clear responsibilities for ensuring that certain controlled items, like those we found, are fully and systematically identified and reviewed.

Conclusions

The Foreign Military Sales program does not have a systematic process to identify and review certain controlled technologies. As a result, items controlled by an international missile nonproliferation agreement were sold through the Foreign Military Sales program without proper review and approval.

Recommendations

To provide for proper review and approval of proposed exports of controlled technologies through the Foreign Military Sales program, we recommend that the Secretaries of State and Defense establish a process to

- identify all items on a proposed Foreign Military Sales agreement that are controlled under the Missile Technology Control Regime or other nonproliferation agreements by taking full advantage of the expertise that resides in the Defense Threat Reduction Agency, the military services, or elsewhere;

-
- refer the information to the State Department;
 - direct the Missile Technology Export Control group or other nonproliferation groups to review missile technology-related items or other controlled items to ensure compliance with the nonproliferation agreements; and
 - reflect this process in ongoing reinvention efforts.
-

Agency Comments

In commenting on a draft of this report, DOD generally concurred that it must develop and implement the processes necessary to strengthen technology transfer controls over MTCR-controlled items proposed for export under the FMS program. However, DOD did not agree with the title of our draft report or our conclusion that responsibilities are unclear under the FMS program. DOD pointed out that the material weaknesses we identified occurred only in technology transfer cases involving MTCR-controlled items. We agree and modified the title and text to be more precise. However, as we note in the report, the DOD and industry reinvention working group recognized that confusion exists about the rules governing the use and transfer of controlled unclassified information under the FMS program. Such confusion goes beyond the transfer of MTCR-controlled items.

DOD concurred with the intent of our recommendation but solicited relief from what it characterized as the daunting task of listing MTCR-controlled items on all FMS documents, which it believes would impede the flow of goods to foreign customers. Our recommendation does not limit DOD's flexibility in how it identifies MTCR-controlled items, as we recognize that there may be different means of doing so. However, identifying controlled items is the first step to ensuring that such items are reviewed for nonproliferation concerns in compliance with U.S. export control laws. Therefore, we have not modified our recommendation. The comments from DOD are reprinted in appendix II. DOD also provided some technical suggestions, which we have incorporated in the text where appropriate.

In commenting on a draft of this report, the State Department agreed with our conclusions and stated that it is working with the Defense Security Cooperation Agency to establish better procedures. The comments from the State Department are reprinted in appendix III. The State Department also provided technical suggestions, which we have incorporated in the text where appropriate.

Scope and Methodology

To identify the process for making technology transfer decisions under the FMS program, we determined which organizations were involved in the FMS disclosure and approval processes and interviewed officials from these organizations about their roles and responsibilities and the criteria and guidance they used in performing their duties. Specifically, we spoke with officials from the State Department's Political Military Bureau and multiple DOD offices, including the Office of the Under Secretary of Defense for Acquisition and Technology, the Office of the Under Secretary of Defense for Policy, the Defense Security Cooperation Agency, the Defense Threat Reduction Agency, and the Defense Intelligence Agency. We also spoke with officials from the Joint Chiefs of Staff, the U.S. Central Command, the Central Intelligence Agency, and each of the military departments as follows:

- Department of the Army
 - Deputy Under Secretary of the Army (International Affairs)
 - U.S. Army Security Assistance Command
 - Tank-automotive and Armaments Command
 - Aviation and Missile Command
 - Apache Program Office
 - Program Executive Office, Tactical Missiles
 - Short Range Air Defense Office
- Department of the Air Force
 - Deputy Under Secretary of the Air Force (International Affairs)
 - Air Force Materiel Command
 - Air Force Security Assistance Center
 - F-16 and F-15 System Program Offices
 - Advanced Medium Range Air-to-Air Missile Joint System Program Office
- Department of the Navy
 - Naval International Programs Office
 - Naval Air Systems Command
 - E2C Program Office
 - F-18 Program Office

At the military departments, we examined export weapons policy papers, Delegation of Disclosure Authority Letters, Technology Assessment/Control Plans, Program Protection Plans, FMS agreements, and/or export licenses for selected weapons programs. In addition, we reviewed the laws, regulations, DOD directives, and policies that govern technology transfer and disclosure of information.

To assess controls for reviewing technology transfer considerations, we examined coordination documentation from various DOD offices, Joint Staff, and military departments. We reviewed the Defense Security Cooperation Agency's coordination requests to the Joint Chiefs and the Office of the Under Secretary of Defense for Acquisition and Technology and their responses from 1994 to 1998. The Defense Security Cooperation Agency did not have these requests centrally maintained, so we relied on the records of the recipient offices. In addition, we discussed with DOD and State Department officials how they identified controlled technology and reviewed it in accordance with relevant DOD policies and procedures, governing laws and regulations, and MTCR guidelines. We compared the coordination practices for FMS items with those for export licenses to identify any similarities or differences among the reviewing organizations and their level of expertise in making decisions. By comparing practices with export control laws and policies, we identified areas of weaknesses and discussed these with DOD and State Department officials.

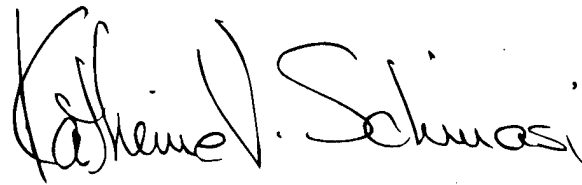
To examine DOD's proposals to improve technology transfer practices, we obtained documents from the Defense Security Cooperation Agency and the military departments regarding their FMS reinvention initiatives. We spoke with government officials involved in these initiatives about their proposed plans, the status of implementation of recommendations, and/or the extent of coordination with other reinvention projects.

We performed our review between January and August 1999 in accordance with generally accepted government auditing standards.

We are sending copies of this report to Representative Sam Gejdenson, Ranking Minority Member, House International Relations Committee, and Senator Jesse Helms and Senator Joseph Biden in their capacities as Chairman and Ranking Minority Member of the Senate Foreign Relations Committee. We are also sending copies to the Honorable Madeleine K. Albright, Secretary of State; the Honorable William S. Cohen, Secretary of Defense; and the Honorable Jacob J. Lew, Director, Office of Management

and Budget. We will make copies available to others on request. Please contact me at (202) 512-4841 if you have any questions concerning this report. Key contributors to this assignment were Anne-Marie Lasowski, Anne Howe, and John Neumann.

Sincerely yours,

A handwritten signature in black ink, reading "Katherine V. Schinasi". The signature is written in a cursive style with a large initial "K" and a distinct "V" before the last name.

Katherine V. Schinasi
Associate Director
Defense Acquisitions Issues

Military Departments' Disclosure and Foreign Military Sales Agreement Process

Air Force Disclosure Process:

The Air Force's central focal point for making disclosure decisions is the Deputy Under Secretary of the Air Force for International Affairs. The level of coordination depends on the complexity of the case. For major weapon sales, the International Affairs Disclosure Division coordinates a position through an internal process known as Topline coordination. If the Air Force does not have disclosure authority, it requests an exception from the National Disclosure Policy Committee. The division is responsible for notifying staff of disclosure decisions and issuing disclosure guidance.

Air Force Delegation of Disclosure Authority:

The International Affairs Disclosure Division delegates certain disclosure authority for major weapon sales to major commands. Commanders of major commands, field operating agencies, and direct reporting units are responsible for designating disclosure officers and ensuring that the command disclosure program is effective.

Air Force Foreign Military Sales Agreement Preparation:

The International Affairs Policy Division generally prepares Foreign Military Sales agreements for major weapon systems with input from the program offices.

Army Disclosure Process:

The Office of the Deputy Chief of Staff for Intelligence has exclusive authority for making disclosure decisions for classified military information under the Army's jurisdiction. The Office prepares proposed exceptions to the National Disclosure Policy in consultation with the sponsoring Army agency and the Deputy Under Secretary of the Army, International Affairs. In addition, International Affairs prepares export policies as needed.

Army Delegation of Disclosure Authority:

The Deputy Chief of Staff for Intelligence has delegated portions of its disclosure authority to selected Army components. The commander of the U.S. Army Security Assistance Command, under the Army Materiel Command, has the authority to make disclosure determinations for security assistance programs. Major system commands have an information security directorate that is responsible for providing a disclosure assessment for information under their jurisdiction.

Army Foreign Military Sales Agreement Preparation:

Each command's security assistance management directorate, in consultation with program offices, prepares Foreign Military Sales agreements that are reviewed by the U.S. Army Security Assistance Command.

Appendix I
Military Departments' Disclosure and
Foreign Military Sales Agreement Process

Navy Disclosure Process:

The Navy International Programs Office, which reports to the Assistant Secretary of the Navy (Research, Development, and Acquisition), is the central focal point for making disclosure decisions. The Office heads an internal working group, the Technology Transfer and Security Assistance Review Board, which makes technology transfer decisions. The Office drafts a policy memorandum and coordinates it with various Navy components, including systems commands. Once a consolidated position is obtained, the Office transfers the policy to the Vice Chief of Naval Operations and the Assistant Secretary of the Navy (Research, Development, and Acquisition) to make a final decision on the disclosure policy. If the Navy does not have disclosure authority, the Office requests an exception from the National Disclosure Policy Committee.

Navy Delegation of Disclosure Authority:

The International Programs Office has delegated limited disclosure authority to the systems commands. The commands have a security branch responsible for disclosure decisions under their jurisdiction.

Navy Foreign Military Sales Agreement Preparation:

The International Programs Office, in conjunction with the commands and program offices, generally prepares Foreign Military Sales agreements. The Office also validates the agreements before they are signed.

Comments From the Department of Defense



DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

03 SEP 1999

In reply refer to:
1-99/011387

Ms. Katherine Schinasi
Associate Director, Defense Acquisitions Issues
National Security and International Affairs Division
U.S. General Accounting Office
Washington, D.C. 20548

Dear Ms. Schinasi:

This is the Department of Defense (DoD) response to the GAO draft report "DEFENSE TRADE: Approving Technology Transfer Under the Foreign Military Sales Program Needs to be Strengthened," dated August 9, 1999 (GAO Code 707399/OSD Case 1876).

Overall, the DoD concurs that it must develop and implement the processes necessary to strengthen technology transfer controls over goods proposed for export under the Foreign Military Sales (FMS) program and subject to the Missile Technology Control Regime (MTCR).

The DoD does not, however, agree with the title of the report or its conclusion that "responsibilities for identifying technology transfer concerns have not been clearly established under the FMS program." The report has a good discussion on the National Disclosure Policy process that clearly reflects a well-defined set of responsibilities for technology transfer procedures, promulgated in a series of DoD and Service regulations that have proven effective for years. In fact, the report does not identify any material weaknesses with FMS technology transfers outside of the special case involving MTCR-controlled items. I would propose that the title of the report be changed to "Approving Technology Transfer Under the Foreign Military Sales Program for MTCR-Controlled Items Needs to be Strengthened."

Sincerely,

A handwritten signature in black ink, appearing to read "M. Davison", is placed above the typed name.

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Enclosures:

1. Department of Defense Comments to the GAO Recommendations
2. Recommended Changes to the Draft Report

GAO DRAFT REPORT DATED AUGUST 9, 1999
(GAO Code 707399) OSD CASE 1876

"DEFENSE TRADE: Approving the Technology Transfer
Under the Foreign Military Sales
Program Needs to be Strengthened."

DEPARTMENT OF DEFENSE COMMENTS
TO THE GAO RECOMMENDATIONS

To ensure proper review and approval of proposed exports of controlled technologies through the Foreign Military Sales (FMS) program, the GAO recommended that the Secretaries of State and Defense establish a process to:

DOD COMMENT: The above mentions both the Secretaries of Defense and State. The comments provided below pertain only to the Defense Department. No Department of State positions should be inferred.

RECOMMENDATION 1a: Identify all items on a proposed FMS agreement that are controlled under the Missile Technology Control Regime (MTCR) or other nonproliferation agreements, by taking full advantage of the expertise that resides in the Defense Threat Reduction Agency, the military services or elsewhere.

DOD RESPONSE: The DoD concurs with the intent of this recommendation. Nevertheless, as worded, the recommendation is extremely difficult to implement. There is no list of proscribed MTCR items tied to specific inventory items in US Government depots, logistic centers, etc. The so-called MTCR list, as used by export license personnel, defines generic commodities with certain performance characteristics applicable to MTCR criteria. Matching the generic MTCR items against specific USG inventory items is a daunting, long term task given the number of items in the inventory and the number of FMS requisitions per year, approximately 300,000. The challenge is to come up with a manageable process/solution which both accommodates MTCR concerns and does not impede the flow of goods to the foreign customer.

Therefore, to make this recommendation more practical, we solicit relief from that proposed and offer the following in its place:

Develop and implement the methodologies necessary to comply with the Missile Technology Control Regime or other nonproliferation agreements on all items proposed for export under the FMS process

For example, this approach gives the flexibility to examine alternatives to listing every requisitioned item on FMS documents, such as Letters of Offer and Acceptance, and opens the door for training personnel in the field on MTCR criteria such that they can certify the necessary MTCR screening has been done.

Appendix II
Comments From the Department of Defense

RECOMMENDATION 1b: Refer information to the State Department.

DOD RESPONSE: Concur with the recommendation. The implementation of the first recommendation must, by definition, be to the satisfaction of the State Department.

RECOMMENDATION 1c: Direct the Missile Technology Export Control committee or other nonproliferation groups to review missile technology related items or other controlled items to ensure compliance with the nonproliferation agreements.

DOD RESPONSE: No comment. Since this letter only provides Defense Department comments and the Department of State chairs the Missile Technology Export Control committee, only State can comment/implement this recommendation.

RECOMMENDATION 1d: Reflect this process in on-going reinvention.

DOD RESPONSE: Concur with the recommendation. As the process or methodology discussed in the response to the first recommendation is developed, it will be reflected in DSCA's on-going reinvention efforts.

Enclosure 1

2

Comments From the Department of State



United States Department of State

Chief Financial Officer

Washington, D.C. 20520-7427

September 13, 1999

Dear Mr. Hinton:

We appreciate the opportunity to review your draft report, DEFENSE TRADE: Approving Technology Transfer Under the Foreign Military Sales Program Needs to be Strengthened," GAO/NSIAD-99-231, GAO Job Code 707399. The Department of State provided technical changes to your staff for consideration in finalizing the report.

The Department agrees with the basic conclusions of the draft report and is working with the Defense Security Cooperation Agency to establish better procedures to identify items in proposed Foreign Military Sales cases to ensure that missile technology and other controlled items of proliferation concern receive proper review.

If you have any questions concerning this response, please contact Mr. Michael Slack, Office of Regional Security and Arms Transfers, Bureau of Political-Military Affairs, at (202) 647-2882 .

Sincerely,

A handwritten signature in cursive script that reads "Bert Edwards".

Bert T. Edwards

cc:

GAO/NSIAD – Ms. Lasowski
State/PM/RSAT – Mr. Slack

Mr. Henry L. Hinton, Jr.,
Assistant Comptroller General,
National Security and International Affairs,
U.S. General Accounting Office.

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